(3)

Supreme Court, U.S.
FILED
MAR 29 1999
CLERK

No. 98-1310

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

WILLIAM J. ZISK AND LOIS E. ZISK
Petitioners

vs.

CITY OF ROSEVILLE; JUNE WANISH; GEORGE A BULJAN; RICHARD ROCCUCCI; THOMAS CHAMBLISS; JOHN M. BYOUK; MEL HAMEL; WILLIAM SANTUCCI; PAULINE ROCCUCCI; HARRY CRABB, JR; MICHAEL F. DEAN; STEVEN BRUCKMAN; G. RICHARD BROWN; FREDERICK L. BARNETT; MARTHA RILEY,
Respondent(s)

On Petition For Writ Of Certiorari To
United States Court Of Appeals
For The Ninth Circuit

REPLY TO BRIEF IN OPPOSITION

WILLIAM J. ZISK AND LOIS E. ZISK
205 Thomas Street
Roseville, California 95678-1858
Telephone (916) 782-2233
Telecopier (916) 783-3408

In Propria Persona

3988

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Supreme Court ought to issue an order granting certiorari, vacating the judgment below without determination of the merits and remanding to entry of default judgment for the relief demanded in petitioners' verified amended complaint, where (a) intervening factors have arisen that have a legal bearing on the decision, (b) clarification of the opinion below is needed to assure the jurisdiction of the Court of Appeal, (c) clarification of the factor the judgment below was in error, (d) clarification of the factor that entry of default judgment on the merits for the relief demanded in petitioners' complaint is appropriately in order.

2. Whether petitioners have been deprived of a constitutionally protectible property interest for an improper motive and by means that were pretexual, arbitrary and capricious and without any rational basis and without substantive procedural due process and just compensation.

3. Whether District Court Chief Judge William A. Shubb, with daughter employed as attorney in respondent counsels' law firm, violated the mandates of Title 28 U.S.C.A. § 455(a) (b)(1)(5)(ii)(iii) and exceeded jurisdiction with summary dismissal of petitioners' verified amended civil complaint prior to his recusal.

4. Whether District Court refusal to enter default for failure to plead or otherwise respond to petitioners' complaint within required time period denied petitioners equal treatment and due process requirement of opportunity to be heard.

5. Whether non-compliance of the mandates of Federal Rules of Civil Procedures Rule 58 and Rule 79(b) starts the time to run for notice of appeal.

6. Whether respondent former city attorney has deprived petitioners impartial procedural due process, equal treatment and just compensation while acting in triple capacity - first as respondent city attorney in denial of petitioners qualified application for a building permit - secondly, as state superior court judge presiding over respondents abusive eminent domain proceedings - thirdly, as justice of state court of appeals deciding related actions.

7. Whether lower state court judges deemed disqualified have jurisdiction to deprive petitioners of procedural due process, just compensation and equal treatment with summary dismissal of petitioners' verified civil complaint.

8. Whether a public entity may conspire to take private property for public use by fraudulent land use zoning and abusive eminent domain powers without procedural due process, equal treatment and just compensation.

9. Whether published lower state court appellate opinion, Placer County Superior Court No. 41105, Zisk v. City of Roseville et. al., 56 C.A. 3d 41; 127 Cal. Rptr. 896; Civ. No. 15121 Third Dist. Feb. 20, 1976 should be reviewed by the United States Supreme Court for "plain error" and reversed.

10. Whether lower state court eminent domain proceeding, Placer County, California Superior Court No. 41104, City of Roseville v. William J. Zisk and Lois E. Zisk, November, 1977, should be reviewed by the United States Supreme Court for "plain error"; annulled and rescission granted with the relief demanded in United States District Court for the Eastern District of California, case[s] Number[s] Civ-S-95-02134 GEB/GGH, William J. Zisk and Lois E. Zisk v. City of Roseville et. al., and Civ-S-97-0426 GEB/GGH, William J. Zisk and Lois E. Zisk v. City of Roseville, California et. al.; Ninth Circuit Court of Appeals Number[s] 97-17048 and 98-16722, respectively.

11. Whether petitioners have been denied the constitutional right to a jury trial with the amount in excess of twenty dollars in controversy.

12. Whether petitioners' private property was seized and searched without writ or warrant nor supported by probable cause.

13. Whether respondents are in default and lack standing in the proceedings.

I. THE UNITED STATES SUPREME COURT HAS JURISDICTION

Respondents' claim that this court does not have jurisdiction of this petition is erroneous. This court has jurisdiction pursuant to petitioners' statement of jurisdiction. See petitioners Petition for Writ of Certiorari at 1. Petitioners exhausted their state court remedies on the issues raised by this petition.

Petitioners petitioned for Rehearing to the state appellate court. Petition for Rehearing was denied on January 17,1996 (R.B. App. 7).

Petitioners brought a Petition for Review in the California Supreme Court on the issues raised in Petitioners Statement of the Case. See petitioners' Petition for Writ of Certiorari at 3-22. The California Supreme Court denied review on March 20, 1996 (R.B. App. 11).

The jurisdiction of the United States Supreme Court does not depend on whether the state court addressed the federal questions. It is enough that the federal claims were made and not accepted. *(Lynk v. La Porte Superior Court No. 2*, 789 F.2d 554 (7th Cir. 1986). Furthermore, when the California Supreme Court denies a Petition for Review, it is to be assumed that the court has been given fair opportunity to review the merits of the petitioners' claim, for purposes of exhaustion of state court remedies (*Roman v. Estelle*, 917 F.2d 1505 (9th Cir. 1990). The issues have been raised, preserved, and passed upon by the California Supreme Court.

II. Respondents' cite of *Weinberger v. Equifax*, 555 F 2d 456 (5th Cir. 1977) is erroneous and misplaced.

In reviewing respondents Brief in Opposition to Petition for Writ of Certiorari at page 12, petitioners were unable to locate the case as cited above, holding that 28 U S.C. § 455 does not mandate recusal of a judge on the basis of family relationship where the family member does not actively represent a party in that case.

Respondents have acknowledged that Judge Shubb's daughter, Carrisa A. Shubb was an associate attorney at Porter, Scott, Weiberg & Delehant, the law firm representing respondents from August 2, 1993 to November 8, 1996 and was an associate during the period when her father, the Honorable William B. Shubb, acted as the judge in this case. Upon learning of the father/daughter association, petitioners immediately forwarded objections to the district court on April 25,1996 (R.B. App. 17), before Judge Shubb made any rulings in the case. The letter in relevant part concluded with:

> . . . Also, I/We are informed that the Honorable William B. Shubb has a daughter in the law firm involved. I/We are besides ourselves that the law firm of Porter, Scott, Weiberg & Delehant chose to represent the defendants and then to be allowed to get a judge of this Honorable Eastern District Court in place to make any ruling ultimately benefiting his daughter's relationship and therefore enhance her standing in the law firm. I/We respectfully object to the Honorable William B. Shubb, because of the potential for the appearance of bias and obligations that grow out of the strong bond of the father/daughter relationship at issue.

III. REVIEW IS WARRANTED BECAUSE RESPONDENTS ARE IN DEFAULT, HAVE NOT BEEN RELIEVED OF DEFAULT, ARE STILL IN DEFAULT AND LACK STANDING IN THIS PROCEEDING

The complaint in this action was timely filed on November 24, 1995 and amended on February 2, 1996. Service of Summons was completed on February 6, 7, 8, 1996, pursuant to F.R.C.P. Rule 4(e)(1).

Unless a different time is prescribed in a statute of the United States, a respondant shall serve an answer within 20 days after being served with the summons and complaint. Federal Rules of Civil Procedure Rule 12(a)(1)(A).

Absolutely no written response whatsoever was received by petitioners or the Clerk of the Court during the 20 days that followed the Service of Summons. The record is devoid of any written request to petitioners or the Court during the 20 days following Service of Summons, requesting an extension of time to answer, pursuant to L.R.142 of the District Court, Eastern District of California. As evidence of no response, whatsoever, see copy of docket dated March 8, 1996, (see R.B. App. 13 - 16).

Respondents are in default and lack standing. Petitioners have objected to the lack of standing of the respondents from the outset of this proceeding and continue to object to the standing of respondents, being in default. Respondents have not been relieved of default and are still in default.

Courts conduct prudential standing analysis only after Article III standing has been established. U.S.C.A. Const. Art. 3, § 1 et seq.

Article III § 2 of the United States Constitution confines the Federal Courts to adjudicating actual cases and controversies In interpreting that restriction, Federal Courts have developed, among others, the doctrine of standing. See *Allen v. Wright* 468 U.S. 737, 750, 104 S. Ct. 3351, 3324, 82 L.Ed. 2d 556 (1984).

Standing does not focus on the merits but is preliminary jurisdictional requirement necessary to establish that a litigant is entitled to judicial action. The standing inquiry focuses on whether the litigant is entitled to have the Court decide the merits of the dispute of particular issues. *Warth v. Seldin*, 422 U.S. 490, 498, 95 S. Ct. 2197, 2205, 45 L.Ed. 2d 343 (1975).

When standing is challenged on the basis of pleadings, the Court accepts as true all material allegations of the complaint and construes the complaint in favor of the complaining party *Pennell v. City of San Jose*, 485 U.S. 1, 7, 108 S. Ct. 849, 855, 99 L.Ed. 2d 1 (1988).

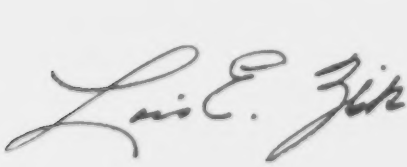
CONCLUSION

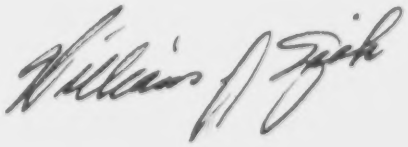
Respondants have avoided any response to the major issues presented for review. In fact, some of the respondants did not respond at all.

Petitioners have received absolutely no response or explantion for the thirty-two (32) year history of this litigation which has been spawned by respondants' deceptive and fraudulent actions so long ago.

Petitioners respectfully request this Honorable Supreme Court consider petitioners reasons for granting Writ of Certiorari.

Respectfully submitted,





Lois E. Zisk
205 Thomas Street
Roseville, California, 95678-1858
Telephone No (916) 782-2233
Petitioner Pro se

William J. Zisk
205 Thomas Street
Roseville, California, 95678-1858
Telephone No (916) 782-2233
Petitioner Pro se

March 26, 1999

No. 98-1310

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

WILLIAM J. ZISK AND LOIS E. ZISK
Petitioners

vs.

CITY OF ROSEVILLE; JUNE WANISH; GEORGE A BULJAN; RICHARD ROCCUCCI; THOMAS CHAMBLISS; JOHN M. BYOUK; MEL HAMEL; WILLIAM SANTUCCI; PAULINE ROCCUCCI; HARRY CRABB, JR; MICHAEL F. DEAN; STEVEN BRUCKMAN; G. RICHARD BROWN; FREDERICK L. BARNETT; MARTHA RILEY,
Respondent(s)

On Petition For Writ Of Certiorari To
United States Court Of Appeals
For The Ninth Circuit

APPENDIX TO REPLY TO BRIEF IN OPPSITION TO

PETITION FOR WRIT OF CERTIORARI

TABLE OF CONTENTS

	PAGE
PETITION FOR WRIT OF MANDATE	1
PETITION FOR REVIEW	3
APPELLATE DECISION	4
PETITION FOR REHEARING	7
PETITION FOR REVIEW	9
PETITION FOR REVIEW	11
REQUEST ENTRY OF DEFAULT	12
DOCKET AS OF MARCH 8, 1996 - 12:13 p.m.	13
LETTER OBJECTING TO JUDGE SHUBB	17
APPLICATION FOR DEFAULT JUDGEMENT	20
DECLARATION OF WILLIAM J. ZISK & LOIS E. ZISK IN SUPPORT OF APPLICATION FOR DEFAULT JUDGEMENT	26
AMENDED NOTICE OF APPEAL DEC. 15, 1997	30

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
THIRD APPELLATE DISTRICT

F I L ED
FEB - 2 1995
COURT OF APPEAL-THIRD DISTRICT
ROBERT L. LISTON, Clerk
BY_____Deputy

WILLIAM J. ZISK & LOIS E. ZISK
Petitioner

vs.

3 Civil C020119
Placer S-1495

SUPERIOR COURT, PLACER COUNTY
Respondent
CITY OF ROSEVILLE
Real Party In Interest

By the Court:

The petition for writ of mandate with request for stay is denied. (See Rule 56 California Rules of Court); (See Sherwood v. Superior Court (1979) 24 Cal.3d 183.)

Dated: February 2, 1995

PUGLIA, P.J.

---

cc: See Mailing List

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
THIRD APPELLATE DISTRICT

MAILING LIST

Re: WILLIAM J. ZISK & LOIS E. ZISK vs.
SUPERIOR COURT, PLACER COUNTY
3 Civil C020119

Copies of the attached document have been sent to the individuals checked below:

WILLIAM J. ZISK
23S Thomas Street
Roseville, CA 95678

LOIS E. ZISK
205 Thomas Street
Roseville, CA 95678

LAW OFFICE OF
MCDONOUGH HOLLAND & ALLEN
MARCIA L. AUGSBERGER
555 Capitol Mall
9th Floor
Sacramento, CA 95814

PLACER COUNTY SUPERIOR COURT CLERK
101 Maple Street
Auburn, CA 95603

Third Appellate District No . C020119
S044898

IN THE SUPREME COURT OF CALIFORNIA
SUPREME COURT

WILLIAM J. ZISK Et A1., Petitioners

SUPREME COURT
FILED
APR 12 1995
Robert Wandruff Clerk
Signed
DEPUTY

v.

SUPERIOR COURT PLACER COUNTY, Respondent
CITY OF ROSEVILLE, Real Party In Interest

Petition for review DENIED.

Signed
Chief Justice

F I L ED
DEC 21 1995
COURT OF APPEAL-THIRD DISTRICT
ROBERT L. LISTON,
BY_____
Deputy Clerk

NOT TO BE PUBLISHED
COPY
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Placer)

WILLIAM J. ZISK AND LOIS E. ZISK, Plaintiffs and Appellants, v. CITY OF ROSEVILLE, Defendant and Respondent.	C020628 (Super. Ct. No. S-1495)

William and Lois Zisk appeal from a trial court order, granting the City of Roseville's motion to dismiss for lack of prosecution. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Zisks filed a complaint against the City in October 1991. The complaint was never served. Two days before the expiration of the three-year time period for service of summons set forth in Code of Civil Procedure section 583.410, the Zisks served the City with a first amended complaint. The City filed a motion to dismiss for lack of prosecution.

The Zisks then filed a statement of disqualification pursuant to Code of Civil Procedure section 170.1 against Judge James L. Roeder. Within 10 days, Judge Roeder ordered the statements of objection and disqualification stricken pursuant to Code of Civil Procedure section 170.4, subdivision (b). Thereafter, Judge Roeder granted the City's motion to dismiss.

DISCUSSION

On appeal the Zisks claim that Judge Roeder was disqualified as a matter of law when he granted the City's motion. The exclusive means of appellate review of an unsuccessful challenge to the trial court judge is by writ petition filed within 10 days of the trial court's order striking the statements of objection and disqualification. (Code Civ. Proc., § 170.3, subd. (d); *People v. Hull* (1991) 1 Cal.4th 266, 271.) Accordingly, they may not claim on appeal that the judge was not qualified to enter judgment. The Zisks make no other claim of error.

The judgment (order) is affirmed.

BLEASE, Acting P. J.

We concur:

SIMS, J.
BROWN, J.

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
THIRD APPELLATE DISTRICT

MAILING LIST

Re: WILLIAM J. ZISK AND LOIS E. ZISK vs.
CITY OF ROSEVILLE
3 Civil C020628

Copies of the attached document have been sent to the individuals checked below:

WILLIAM J. ZISK
205 Thomas Street
Roseville, CA 95678

LOIS E. ZISK
205 Thomas Street
Roseville, CA 95678

LAW OFFICE OF
MCDONOUGH, HOLLAND & ALLEN
MARCIA L. AUGSBURGER
555 Capitol Mall
9th Floor
Sacramento, CA 95814

HONORABLE JAMES L ROEDER
JUDGE OF THE SUPERIOR COURT
PLACER COUNTY
101 Maple street
Auburn, CA 95603

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
THIRD APPELLATE DISTRICT

F I L ED
JAN 17 1996
COURT OF APPEAL-THIRD DISTRICT
ROBERT L. LISTON,
BY_____
Deputy Clerk

WILLIAM J. ZISK & LOIS E. ZISK
Plaintiff and Appellant

vs.

3 Civil C020628
Placer S1495

CITY OF ROSEVILLE
Defendant and Respondent

By the Court:
Appellants' petition for rehearing is denied.

Dated: January 17, 1996

BLEASE, Acting P.J.

---

cc: See Mailing List

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
THIRD APPELLATE DISTRICT

MAILING LIST

Re: WILLIAM J. ZISK & LOIS E. ZISK vs.
SUPERIOR COURT, PLACER COUNTY
3 Civil C020628

Copies of the attached document have been sent to the individuals checked below:

WILLIAM J. ZISK
23S Thomas Street
Roseville, CA 95678

LOIS E. ZISK
205 Thomas Street
Roseville, CA 95678

LAW OFFICE OF
MCDONOUGH HOLLAND & ALLEN
MARCIA L. AUGSBERGER
555 Capitol Mall
9th Floor
Sacramento, CA 95814

PLACER COUNTY SUPERIOR COURT CLERK
101 Maple Street
Auburn, CA 95603

CIVIL NO._____

SUPREME COURT
FILED
JAN 29 1996
Robert Wandruff Clerk

_____
DEPUTY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

-----ooOoo-----

WILLIAM J. ZISK AND LOIS E. ZISK
Plaintiffs, Appellants

vs .

NO. 3 Civil C020628
Placer Sup. No. S-1495

CITY OF ROSEVILLE, CALIFORNIA, a municipal corporation and DOES 1-100, inclusive,
Defendants t Respondents

_____

-----ooOoo-----

PETITION FOR REVIEW

On Appeal From the Judgment of the Superior Court of the State of California, in and for the County of Placer

The Honorable James L. Roeder, Judge

William J. Zisk
Lois E. Zisk
205 Thomas Street
Roseville, CA 95678
Telephone: (916) 782-2233
Telecopier: (916) 783-3408

Appellants In Propria Persona

Court: SUPREME COURT OF THE STATE OF CALIFORNIA
Case Number: 3 Civil No C020628 Placer Superior Court No. S-1495
Case Name: Zisk v. City of Roseville et al

DECLARATION OF PERSONAL SERVICES

I am a citizen of the United States and employed in the County of Placer. I am over the age of eighteen (18) years and a party to the within above-entitled action. My business address is 205 Thomas Street, Roseville, California 95678.

On January 29, 1996, I served the following:

PETITION FOR REVIEW

XXX (by personally delivering a true copy thereof, in accordance with Code of Civil Procedure §1011, to the person(s) and at the address(es) set forth below.

SUPREME COURT (orig. & 13 copies)
900 N Street Fourth Floor
Sacramento, CA 95814-4869

COURT OF APPEAL (1 copy)
Third Appellate District
900 N Street, Fourth Floor
Sacramento, CA 95814-4869

MCDONOUGH, HOLLAND & ALLEN
A Professional Corporation
G. Richard Brown, Esq.(050203)
Marcia L. Augsburger, Esq. (145686)
555 Capitol Mall, 9th Floor
Sacramento, California 95814

CLERK (1 copy)
Placer County Superior Court
101 Maple Street, Room 401
Auburn, California 95603

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on January 29, 1996 at Roseville, California.

_____
William J. Zisk

Third Appellate District No. C020628
S051527

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT
FILED
MAR 20 1996
Robert Wandruff Clerk

DEPUTY

WILLIAM J. AND LOIS E. ZISK Et A1., Appellants

v.

CITY 0F ROSEVILLE, Respondent

Appellants' petition for review DENIED.

Signed
Acting Chief Justice

William J, Zisk
and Lois E. Zisk
205 Thomas Street
Roseville, CA 95678
Telephone (916) 782-2233
Telecopier (916) 783-3408

ORIGINAL
FILED
APR 8 1996
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY_____
DEPUTY CLERK

April 8, 1996

OFFICE OF THE CLERK
United States District Court
Eastern District of California
650 Capitol Mall, Room 2546
Sacramento, CA 95614
(916) 489-5415

Re: CASE NUMBER: CIV-S-95 2134 EJG GGH
WILLIAM J. ZISK AND LOIS E. ZISK V. CITY OF ROSEVILLE, et al

Subject: ENTRY OF DEFAULT
FEDERAL RULES OF CIVIL PROCEDURE, RULE 55(a),(b)(1)

Dear Clerk:

Pursuant to Federal Rules of Civil Procedure, Rule 55(a), (b)(1), I/We are writing you for your entry of default as against the defendants in this action. As you are aware, service of summons and Complaint was completed on February 6,7,8,1996 and each defendant has 20 days, or until February 26, 27, 28, 1996, respectively, at the latest, to serve and file an answer.

Please refer to your court docket of March 8, 1996, 12:13 p.m. (attached for ready reference). Please also note that there is no accompanying proof of service. There has not been any timely appearance and I/We do not want to waive our right to entry of default by directly recognizing the defaulting defendant [s].

Very truly yours,

_____
William J. Zisk

_____
Lois E. Zisk

WJZ/LEZ/lez
Attachments

EXHIBIT A

U.S. District Court REFER
EASTERN DISTRICT OF CALIFORNIA (Sacramento)
CIVIL DOCKET FOR CASE #: 95-CV-2134

Zisk, et al v. City of Roseville, et al — Filed: 11/24/95
Assigned to: Honorable William B Shubb — Jury demand: Plaintiff
Referred to: Magistrate Judge Gregory G Hollows
Demand: $0,000 — Nature of Suit: 440
Lead Docket: None — Jurisdiction: Federal Question
Dkt# in other court: None

Cause: 42 : 1983 Civil Rights Act

WILLIAM J ZISK
plaintiff

William J Zisk
[COR LD NTC] [PRO SE]
205 Thomas Street
Roseville, CA 95678

LOIS E ZISK
plaintiff

Lois E Zisk
[COR LD NTC] [PRO SE]
205 Thomas Street
Roseville, CA 95678

v.

CITY OF ROSEVILLE
defendant

JUNE WANISH
defendant

GEORGE A BULJAN
defendant

MARTHA RILEY
defendant

RICHARD ROCCUCCI
defendant

THOMAS CHAMBLISS
defendant

I hereby certify that the
instrument is a true and correct copy of
the original on file in my office.
ATTEST: JACK L. WAGNER
Clerk U.S. District Court
Eastern District of California
By Signed
Deputy Clerk
Dated March 8, 1996

proceedings include all events. REF
2:95cv2134 Zisk, et al v . City of Roseville, et al

JOHN M BYOUK
defendant

MEL HAMEL
defendant

WILLIAM SANTUCCI
defendant

PAULINE ROCCUCCI
defendant

HARRY CRABB, JR
defendant

TITLE INSURANCE AND TRUST
COMPANY
defendant

Proceedings include all events.

2:95cv2134 Zisk, et al v. City of Roseville, et al REF

11/22/95 3	LETTER to court from plaintiffs informing court of filing (dmb) [Entry date 11/30/95]
11/24/95 1	COMPLAINT before Judge Edward J Garcia; referred to Magistrate Judge Gregory G Hollows; Summons issued; fee status paid; Receipt #169181; jury demand; Notice regarding Consent forms given (dmb) [Entry date 11/30/95]
11/24/95 2	ORDER setting scheduling conference for 9:30am on 3/15/96 before Judge Edward J Garcia (cc: all counsel) (dmb) [Entry date 11/30/95]
1/2/96 4	APPLICATION for order to extend time for service of process of the complaint by plta (ndd) [Entry date 01/03/96]
1/2/96 --	LODGED Order re Application to extend time for service of the complaint 4y plte (ndd) [Entry date 01/03/96]
1/4/96 5	ORDER by Judge Edward J. Garcia ORDERED that plts are granted an extension of 30 days for service of the complaint (cc: all counsel) (ndd)
2/2/96 6	AMENDED COMPLAINT [1-1] by plaintiffs William J Zisk and Lois E Zisk (gm) [Entry date 02/06/96]
2/9/96 7	RETURN OF SERVICE executed Steven Bruckman on 2/8/96 (gm) [entry date 02/13/96]
2/9/96 8	RETURN OF SERVICE executed Frederick L Barnett on 2/6/96 (gm) [Entry date 02/13/96]
2/9/96 9	RETURN OF SERVICE executed upon defendant George A Buljan on 2/8/96 (gm) [Entry date 02/13/96]
2/9/96 10	RETURN OF SERVICE executed upon defendant Martha Riley on 2/8/96 (gm) [Entry date 02/13/96]
2/9/96 11	RETURN OF SERVICE executed upon defendant William Santucci on 2/8/96 (gm) [Entry date 02/13/96)
2/9/96 12	RETURN OF SERVICE executed upon defendant Richard Roccucci on 2/8/96 (gm) (Entry date 02/13/96)
2/9/96 13	RETURN OF SERVICE executed upon defendant Pauline Roccucci on 2/8/96 (gm) [Entry date 02/13/96]
2/9/96 14	RETURN OF SERVICE executed upon defendant Mel Hamel on 2/8/96 (gm) [Entry date 02/13/96]
2/9/9S 15	RETURN OF SERVICE executed upon defendant Harry Crabb Jr on 2/8/96 (gm) [Entry date 02/13/96]
2/9/96 16	RETURN OF SERVICE executed on defendant G Richard Brown on 2/8/96 (gm) [Entry date 02/13/96]

2/9/96 17	RETURN OF SERVICE executed upon defendant John M Byouk on 2/8/96 (gm) [Entry date 02/13/96]
2/9/96 18	RETURN OF SERVICE executed upon defendant Thomas Chambliss on 2/8/96 (gm) [Entry date 02/13/96]
2/29/96 19	RECUSAL ORDER by Honorable Lawrence K. Karlton IT IS HEREBE ORDERED that the Judge Edward J Garcia recuses himself as the judge to whom this case is assigned; The Clerk of the Court shall reassign this case to another judge for all further proceedings, making the appropriate adjustments in the assignments of civil cases to compensate for such reassignment; Case reassigned to Honorable William B. Shubb; AND any dates previously set in this case are hereby VACATED; the parties are referred to the attached Order Setting Status Conference (cc: all counsel) (gk)
2/29/96	ORDER setting scheduling conference for 10:30 on 6/24/96 before Honorable William B. Shubb (cc: all counsel) (gk)

William J. Zisk
and Lois E. Zisk
Roseville, CA 95678
Telephone (916) 782-2233
Telecopier (916) 783-3408

ORIGINAL
FILED
APR 25 1996
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY_____
DEPUTY CLERK

April 24, 1996

OFFICE OF THE CLERK
United States District Court
Eastern District of California
650 Capitol Mall, Room 2546
Sacramento, CA 95814
(916) 498-5415

Re: CASE NUMBER: CIV-S-95 2134 EJG GGH
(Zisk v City of Roseville, et al.)

SUBJET: Defendants April 22, 1996 served and filed Default Reply Co Plaintiffs Opposition

Dear Clerk:

Please be informed that I/We are in receipt of Defendants Reply to our Opposition served and filed on April 15. 1996. Pursuant to the rules, I/We have no due process opportunity for a response. Accordingly, this letter will serve to inform you that regardless, the defendants are in default and have no authority before the court, for any court assisted relief at this time. Please note that I/We hereby object, with an accompanying Proof of Service, to the subject Defendants attempt to have the court grant them any relief.

The defendants, April 22, 1996 served and filed Reply, is also in default to Plaintiffs April 15, 1996, served and filed Opposition to the City of Roseville Defendants moving papers served and filed on March 18, 1996. The Defendants scheduled hearing for April 29, 1996 must be vacated, by the warranted entry of default. The Defendants have no standing to force Plaintiffs to appear against the Defendants. Plaintiffs object to the Defendants scheduled hearing going forward.

Also, I/We are informed the Honorable William B. Shubb has been assigned to this Case, pursuant to the a purported standing order that the

Honorable Edward J. Garcia recuse with thc law fim1 involved. Also, I/We are informed that the Honorable William B Shubb has a daughter in the law firm involved. I/We are besides ourselves, that the law firm of Porter, Scott, Weiberg & Delehant chose to represent the defendants and then to be allowed to get a Judge of this Honorable Eastern District Court in place to make any ruling ultimately benefiting, his daughter's relationship and therefore enhance her standing in the law firm. I/We respectfully object to the Honorable William B. Shubb because of the potential for the appearance of bias and obligations that grow out of the strong bond of the father/daughter relationship at issue.

Very Truly yours,

WILLIAM J. ZISK

LOIS E. ZISK

Court: United States District Court for the Eastern District Of California
Case Number CIV-S-95-2134 EJG / GGH
Case Name: Zisk v City of Roseville, California et al

DECLARATION OF PERSONAL SERVICES

I am a citizen of the United States and employed in the County of Placer. I am over the age of eighteen (18) years and party to the within above-entitled action, My business address is 205 Thomas Street, Roseville, California 95678.

On April 25, 1996, I served the following.
April 24, 1996 letter to the Office of the Clerk, Re: Default Reply

XXX (by personally delivering a true copy thereof, in accordance with California Code of Civil Procedure §1011, to the person(s) and the address(es) set forth below.

Terence J. Cassidy
Law Offices of Porter, Scott. Weiberg & Delehant
A Professional Corporation
3S) University Avenue, Suite 200
Post Office Box 255428
Sacramento, California 95865
(one copy)

Office of the Clerk
United States District Court
Eastern District of California
650 Capitol Mall, Room 2546
Sacramento, CA 95814
(original ant one copy)

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 25, 1996 at Roseville, California.

_____
William J. Zisk

WILLIAM J. ZISK
LOIS E. ZISK
205 Thomas Street
Roseville, CA. 95678
Telephone: (916) 782-2233
Telecopier: (916) 783-3408

Plaintiffs in Pro Per

ORIGINAL
FILED
JAN 21 1997
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY_____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM J. ZISK and LOIS E. ZISK,
Plaintiffs

vs .

CITY OF ROSEVILLE, CALIFORNIA, et al
Defendants

NO.CIV-S-95 2134 CEB GGH
MEMORANDUM OF POINTS AUTHORITIES IN SUPPORT OF PLAINTIFFS APPLICATION FOR DEFAULT JUDGMENT BY COURT
F.R.C.P. Rule 55(a)(b)(2)
DATE: February 18, 1997
TIME: 9:00 a.m.
CTRM: 6

Plaintiffs William J. Zisk and Lois E. Zisk hereby submit the following points and authority in support of Application for Default Judgment by Court.

I
INTRODUCTION

The record in this matter is evidence that Defendants entered the action well after the TWENTY days set forth in the served Summons. The Summons expressly states that unless timely response is made, Judgment by Default will be taken for the relief demanded in the complaint. Defendants have not been relieved of being in Default and still are in

Default. The record in this matter is evidence that Plaintiffs did not respond to the merits of any Defendant paper. Plaintiffs have consistently objected to the lack of standing of the Defendants to litigate their papers. Accordingly, Plaintiffs object to the assertion of the courts authority over plaintiffs' person. Plaintiffs hereby submit Application for Default Judgment by Court.

II
STATEMENT OF FACTS

The complaint in this action was timely filed on November 24, 1995 and amended on February 2, 1996. Service of Summons was completed on February 6, 7, 8, 1996, pursuant to F.R.C.P. Rule 4(e)(1). Absolutely no Defendant written response whatsoever was received by Plaintiffs or the Clerk of the Court during the 20 days that followed the Service of Summons (see Exhibit A attached hereto). The record is devoid of any written request to Plaintiffs or the Court during the 20 days following Service of summons, requesting an extension of time to answer, pursuant to L.R.142 of the District Court, Eastern District of California.

The face of the summons clearly states the following: "YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon Plaintiffs William J. Zisk and Lois E. Zisk an answer to the complaint which is herewith served upon you, within TWENTY days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment

by default will be taken against you for the relief demanded in the complaint." (emphasis added)

Indisputedly, Defendants have not been relieved of being in default and they are still in default. Procedurally, Plaintiffs are fully justified to a warranted due process Default Judgment by Court.

The record in this matter is evidence that Plaintiffs did not respond to the merits of any Defendant paper. Plaintiffs consistently have objected to the lack of standing of the Defendants to litigate their papers, and continue to object to the standing of Defendants, being in default.

III
ARGUMENT

Unless a different time is prescribed in a statute of the United States, a defendant shall serve an answer within 20 days after being served with the summons and complaint. Federal Rules of Civil Procedure Rule 12(a) (1) (A). Defendants are in default and lack standing to force Plaintiffs to respond on the merits, for to do so would constitute a waiver to a warranted procedural Default Judgment. Plaintiffs have objected to the lack of standing of the Defendants from the outset of this proceeding and continue to object to the standing of Defendants, being in default. Defendants have not been relieved of default and are still in default.

Courts conduct prudential standing analysis only after Article III standing has been established. U.S.C.A. Const. Art. 3, § 1 et seq.

Article III § 2 of the United States Constitution confines the Federal Courts to adjudicating actual "cases" and "controversies," In interpreting that restriction, Federal Courts have developed, among others, the doctrine of standing. See Allen v. Wright 468 U.S. 737, 750, 104 S. Ct. 3351, 3324, 82 L.Ed. 2d 556 (1984).

Standing does not focus on the merits but is preliminary jurisdictional requirement necessary to establish that a litigant is entitled to judicial action. The standing inquiry focuses on "whether the litigant is entitled to have the Court decide the merits of the dispute of particular issues." Warth v. Seldin, 422 Y,S. 490, 498, 95 S. Ct. 2197, 2205, 4S L.Ed. 2d 343 (1975).

When standing is challenged on the basis of pleadings, the Court accepts as true all material allegations of the complaint and construes the complaint in favor of the complaining party. Pennell v, City of San Jose, 485 U.S. 1, 7, 108 S. Ct. 849, 855, 99 L.Ed. 2d 1 (1988).

The face of the summons is very clear in stating: "YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon Plaintiffs William J. Zisk and Lois E. Zisk an answer to the complaint which is herewith served upon you, within TWENTY days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint." (emphasis added) see Cass County Music Company, et al, vs. Daniel J, Kobasic 635 F Supp 7, (1984).

Plaintiffs, as citizens and residents of the United States,

are entitled to due process and equal protection and application of the law as guaranteed by the Fifth and Fourteenth Amendments of the Constitution of the United States of America.

IV
CONCLUSION

Based on the foregoing, Plaintiffs William J. Zisk and Lois E. Zisk respectfully request an Order of this Honorable Court that Defendants' City of Roseville, California; Harry Crabb, Jr. Pauline Roccucci; Mel Hamel; William Santucci; John M. Byouk; Richard Roccucci; Thomas Chambliss; Martha Riley; George A Bultan; June Wanish; Michael F. Dean; Steven Bruckman; G. Richard Brown and Frederick L. Barnett are in default for failure to timely plead or otherwise defend in said action as directed in the Summons and as provided in the Federal Rules of Civil Procedure, and that Plaintiffs' herewith Application for Default Judgment by Court be Granted.

Dated: January 20, 1997 Respectfully Submitted,

_____ _____

Lois E. Zisk William J. Zisk

5

Court: United States District Court for the Eastern District of California
Case Number: CIV-S-95 2134 GEB/GGH
Case Name: Zisk v. City of Roseville, California et al

DECLARATION OF PERSONAL SERVICE

I am a citizen of the United States and employed in the County of Placer. I am over the age of eighteen (18) years and party to the within above-entitled action. My business address is 205 Thomas Street, Roseville, California 95678. On January 21, 1997, I served the following:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS APPLICATION FOR DEFAULT JUDGMENT BY COURT

F.R.C.P. Rule 55(a)(b)(2)

XXX by personally delivering a true copy thereof, in accordance with California Code of Civil Procedure §1011, to the person(s) and the address(es) set forth below.

Terence J. Cassidy
Law Offices of Porter, Scottt Weiberg & Delehant
A Professional Corporation
350 University Avenue, Suite 200
Post Office Box 225428
Sacramento, California 95865
(one copy)

Office of the Clerk
United States District Court
Eastern District of California
650 Capitol Mall, Room 2546
Sacramento, CA 95814
(Original and one copy)

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 21, 1997 at Roseville, California.

_____
William J. Zisk

WILLIAM J. ZISK
LOIS E. ZISK
205 Thomas Street
Roseville, CA. 95678
Telephone: (91 6) 782-2233
Telecopier: (916) 783-3408

ORIGINAL
FILED
JAN 21 1997
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY_____
DEPUTY CLERK

Plaintiffs in Pro Per

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM J. ZISK and LOIS E. ZISK,
Plaintiffs

vs.
CITY OF ROSEVILLE, CALIFORNIA et al
Defendants

_____/

NO.CIV-S-95 2134 GEB GGH
DECLARATION OF WILLIAM J. ZISK AND LOIS B, ZISK IN SUPPORT OF APPLICATION FOR DEFAULT JUDGMENT BY COURT

DATE: FEBRUARY 18, 1997
TIME: 9:00 a.m.
CTRM 6

I WILLIAM J. ZISK AND I, LOIS E. ZISK, DECLARE:

1. I/We are the Plaintiffs' in this action.

2. The complaint in this action was timely filed on November 24, 1995 and amended on February 2, 1996.

3. Service of Summons on Defendants was completed on February 6, 7, 8, 1996, pursuant to F.R.C.P, Rule 4(e)(1).

4. Absolutely no Defendant written response whatsoever was received by Plaintiffs or the Clerk of the Court during the 20 days that followed the Service of Summons.

5. The record is devoid of any written request to Plaintiffs or the Court during the 20 days following Service of Summons, requesting an extension of time to answer, pursuant to

L.R.142 of the District Court, Eastern District of California.

6. I absolutely did not grant an extension of time to answer the service of summons, either oral or written, to any of the defendants in this action.

7. The face of the summons clearly states the following: "YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon Plaintiffs William J. Zisk and Lois E. Zisk an answer to the complaint which is herewith served upon you, within TWENTY days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint."(emphasis added}

8. Indisputedly, Defendants have not been relieved of being in default and they are still in default. Procedurally, Plaintiffs are fully justified to a warranted due process judgment by default.

9. The record in this matter is evidence that plaintiffs did not respond to the merits of any defendant paper. Plaintiffs consistently have objected to the lack of standing of the Defendants to litigate their papers, and continue to object to the standing of defendants, being in default.

10. Defendant[s] City of Roseville, California; Harry Crabb, Jr.; Pauline Roccucci; Thomas Chambliss; Martha Riley; George Buljan; June Wanish; Michael F. Dean; Steven Bruckman; G. Richard Brown; Frederick L. Barnett are not an infant or incompetent person or in military service or otherwise exempted under the Soldiers' and Sailors' Civil Relief Act of 1940; and

11. Said defendant[s] have not timely appeared in this

action. Notice of this application has been served as required by Rule 55(a)(b)(2).

12. Plaintiff is entitled to judgment against said defendant[s] on account of the claims pleaded in the complaint filed on November 24, 1995 and amended on February 2, 1996, to wit: Inverse Condemnation; Conspiracy to Violate and Violation of Civil Rights; Fraud; Rescission.

13. The amount of 1udgment sought is the relief demanded in the complaint.

The matters stated herein based on personal knowledge and information are true and correct. Those matters stated under belief, I believe them to be true and correct. If called to testify as a witness in this matter I can competently testify as to matters of fact.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this January 20, 1997 at Roseville, California 95678.

Lois E. Zisk

William J. Zisk

3

Court: United States District Court for the Eastern District of California
Case Number: CIV S-95-2134 GEB/GGH
Case Name: Zisk v. City of Roseville, California et al

DECLARATION OF PERSONAL SERVICE

I am a citizen of the United States and employed in the County of Placer, I am over the age of eighteen (18) years and party to the within above-entitled action. My business address is 205 Thomas Street, Roseville, California 95678.

On January 21, 1997, I served the following:

DECLARATION OF WILLIAM J. ZISK AND LOIS E. ZISK IN SUPPORT OF APPLICATION FOR DEFAULT JUDGMENT BY COURT

F.R.C.P. Rule 55(a} (b) (2)

XXX by personally delivering a true copy thereof, in accordance with California Code of Civil Procedure §1011, to the person(s) and the address(es) set forth below.

Terence J, Cassidy
Law Offices of Porter, Scott, Weiberg & Delehant
A Professional Corporation
350 University Avenue, Suite 200
Post Office Box 255428
Sacramento, California 95865
(one copy)

Office of the Clerk
United States District Court
Eastern District of California
650 Capitol Mall, Room 2546
Sacramento, CA 9S814
(Original and one copy)

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 21, 1997 at Roseville, California.

William J. Zisk

WILLIAM J. ZISK
LOIS E. ZISK
205 Thomas Street
Roseville, CA 95678
Telephone: (916) 782-2233
Telecopier: (916) 783-3408

ORIGINAL
FILED
DEC 15 1997
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY_____
DEPUTY CLERK

Plaintiffs in Pro Per

IN THE UNITFD STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM J. ZISK and LOIS E. ZISK,
Plaintiffs

NO. CIV-S-95 2134 GEB / GGH
AMENDED NOTICE OF APPEAL
F.R.A.P., Rule 4 (a), (4)

vs.

CITY OF ROSEVILLE,
CALIFORNIA, et al,
Defendants

_____/

TO THE CLERK OF THE ABOVE ENTITLED COURT:

Pursuant to the provision of Federal Rules of Civil Procedure, Rules 54, 58, and 79 (a), plaintiffs *in propria persona*, hereby submit the following AMENDED NOTICE OF APEAL from the purported Judgement in A Civil Case, filed on July 11, 1997. Plaintiffs do not waive the requirements of the separate document requirement specified in rule 58, for purposes of a final appealable Judgment, *see Bankers Trust Co. v Mallis* 435 U.S. 381, 98 S.Ct. 1117, 55 Led 2d 357 (1978).

On October 9, 1997, plaintiffs served and filed a separate Notice of Motion and Motion on this issue, being summarily denied without any reasoning by filed Order on December 10, 1997, and simultaneously prohibiting any clarification, modification, amendment and prohibiting plaintiffs from filing any further motions on this subject. Plaintiffs' hereby incorporate by reference plaintiffs' said summary denied Notice and Motion herein.

WHEREBY, AMEMDED NOTICE IS HEREBY GIVEN that, William J. Zisk and

Lois E. Zisk, plaintiffs in the above named case, hereby jointly appeal to the United States Court of Appeals for the Ninth Circuit from the purported Judgment filed herein on July 11, 1997, including but not limited to all orders of the court of any kind or nature issued in this action since it's commencement though and including the September 11, 1997 filed Order denying plaintiffs' Noticed Motion for New trial filed July 21, 1997, and through and including the December 10, 1997 filed order hand dated purportedly December 5, 1997, and filed December 10, 1997 summarily denying plaintiffs' Noticed Motions pertaining to factual lack of jurisdiction[s] and further prohibiting plaintiffs' from any further relief in the interests of justice.

Dated: December 13, 1997

Lois E. Zisk

William J. Zisk

CASE Zisk v. City of Roseville, California, et al
CASE NUMBER: 97- 17048, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

DECLARATION OF SERVICE BY MAIL

I am a citizen of the United States and employed in the County of Placer, I am over the age of eighteen (18) years and party to the within above-entitled action. My Business address is 205 Thomas Street, Roseville, California 95678.

On December 15, 1997 I served a true and correct copy of the following:

AMENDED NOTICE OP APPEAL

by placing said copy in a sealed envelope with postage thereon fully prepaid and deposited in the U.S. Mail at Roseville, CA 95678, addressed as follows:

Terence J. Cassidy
Law Offices of Porter, Scott/ Weiberg & Delehant
A Professional Corporation
350 University Avenue Suite 200
Post office Box 255428
Sacramento, California 95865

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 15, 1997 at Roseville, California 95678.

_____
William J. Zisk